

PLANNING COMMISSION

ACTION MINUTES

TUESDAY, FEBRUARY 5, 2002

Chair Parsons called the meeting to order at 7:04 p.m. at the Twin Pines Senior and Community Center.

**1. ROLL CALL:**

Present, Commissioners: Parsons, Mathewson, Wiecha, Gibson, Petersen, Feierbach

Absent, Commissioners: Torre (arrived 7:10 p.m.)

Present, Staff: Community Development Director Ewing (CDD), Principal Planner de Melo (PP), Associate Planner Ouse (AP), City Attorney Savaree (CA), Recording Secretary Flores (RS)

**2. AGENDA STUDY SESSION:**

Chair Parsons announced that Item 7B, the scheduled **Public Hearing on the Monte Cresta Drive Roadway Extension**, has been pulled from the agenda and will be re-noticed at a future date. PP De Melo stated for clarification that the notice should have stated that Damon Campbell is the sole applicant for Item 7B and invited the public to stay for the discussion of Item 6B, during which time the Hillside Roadway Improvement Plans will be discussed from a general perspective. He added that 7B was postponed due to staff's concerns based on information presented as part of the application, and wanted to make it clear that, in working with the applicant, staff felt it would be mutually beneficial to continue the item. He stated that there is a lot of information yet to be submitted regarding questions of the process in and of itself for the Hillside Roadway Plans; staff will bring the project back to the Commission as soon as the information comes forth for the specific plan for the Monte Cresta roadway extension.

Chair Parsons added that there would be no action taken on item 6B, Hillside Roadway Plans, as it is merely an informational study session to brief the Commission on the process where they are called upon to approve or disapprove new roads or partial segments of roads.

**3. AGENDA AMENDMENTS: None**

**4. COMMUNITY FORUM (Public Comments):**

Damon Campbell, 2355 34<sup>th</sup> Avenue, San Francisco, stated that he is the sole applicant for the **Monte Cresta Drive roadway extension project**, and expressed his dissatisfaction with the lengthy process he had been through. He wanted it clear for the record that the hearing was cancelled at staff's request, not his.

**MOTION: By Commissioner Wiecha, seconded by Commissioner Mathewson, to close the Community Forum. Motion passed.**

Commissioner Torre arrived at 7:10 p.m.

**5. CONSENT CALENDAR:**

**Minutes for November 20, 2001**

**MOTION: By Commissioner Mathewson, seconded by Commissioner Gibson, to approve the Minutes of November 20, 2001. Motion passed 6/0/1, with Commissioner Feierbach abstaining.**

## **Minutes for December 4, 2001**

**MOTION: By Commissioner Mathewson, seconded by Commissioner Feierbach, to approve the Minutes of December 4, 2001. Motion passed 4/0/3, with Commissioners Mathewson, Gibson and Weicha abstaining.**

## **Minutes for December 18, 2001**

**MOTION: By Commissioner Mathewson, seconded by Commissioner Gibson, to approve the Minutes of December 18, 2001. Motion passed 6/0/1 with Commissioner Torre abstaining.**

### **6. STUDY SESSION:**

**6A. Review of final Landscape/Irrigation Plan for Single Family Dwelling at 3229 Upper Lock Avenue consistent with action taken by City Council on November 13, 2001.**

PP de Melo summarized the staff report, recommending approval of the landscape/irrigation plan as proposed. He noted that an e-mail had been received from Jeff Marshall, 3250 Upper Lock Avenue, asking that the issue related to screening of the meters be reviewed by the Commission. Staff believes that once the landscaping as proposed reaches its full growth at a five-year period it will achieve the necessary screening of all components of the wall and the meters.

C Feierbach asked how many of the trees are deciduous. PP de Melo responded that the landscape architect has indicated that all of the trees are of an evergreen variety.

Greg Kirkner, landscape architect for the project, confirmed that there are no deciduous trees, and, responding to Chair Parsons' question regarding a bare area shown on the plans, stated that it is a concrete walk that is required to gain access to read the meter. He added that the area would be irrigated by an automatic drip irrigation system. Responding to C Feierbach's concern about a balance between the trunks of tall trees and bushes in the front, he stated that the whole concept of the plan is so that it looks naturalized and the plants were chosen because of their similar growth patterns to the oak and will grow up and fill the area.

**MOTION: By Commissioner Feierbach, seconded by Commissioner Mathewson, to approve the landscape plan as presented.**

**Ayes: Wiecha, Gibson, Torre, Petersen, Feierbach, Mathewson, Parsons**

**Motion Passed 7/0.**

### **6B Hillside Roadway Improvement Plans**

PP de Melo summarized the staff report, noting that the information is provided as a framework for a feedback session so that the Commission can have this information at hand and can discuss what actually constitutes a complete submittal for a roadway plan as well as what findings they need to make.

The Commission's discussion is summarized as follows:

Commissioner Feierbach:

Asked for clarification of policy regarding building a road if cross slope is over 50%. CDD Ewing cited page 358 of the Municipal Code.

Asked what happens if the road cannot be built without variances. PP de Melo responded that as part of the Plan, an applicant can choose to submit an application that meets all the statutes of the City's codes, or he can apply for exceptions. Seven findings would have to be made. CDD Ewing stated that the Commission should keep in mind that roadway plans are not evaluated the same as development on private property; roadway requirements are not in the Zoning Code, they are in the Municipal Code. The concept of a Variance does not apply. Instead there are exceptions which can be granted by the City Council upon recommendation by the Commission. – it is parallel to but different from the Variance process.

Asked who judges the adequacy of proposed financing and if the City should have the applicant place a bond equal to or more than what the road will cost. CDD Ewing responded that there are no standards for adequacy on a number of these application requirements, but that staff will be looking for some verifiable proof of financial ability or a mainstream type of plan to provide financing - i.e., a proposal for an assessment district and some demonstration that that could go forward with support from affected property owners, a reimbursement agreement that is presented in draft form, or a statement from a bank showing credit worthiness.

Commissioner Gibson

Asked about the status of a landowner whose property is in the middle of a roadway that cannot be put through to his property. CDD Ewing responded that the property has access to a right-of-way; they can apply for a road but the City is not obligated to approve a road that is not safe.

Commissioner Torre

Noted that the San Juan Plan policy that is opposed to incremental development on roadways expired in 1990. PP de Melo responded that there is no policy currently in place that speaks to allowing or not allowing expansion on an incremental basis. Currently, in terms of geologic hazard criteria, the policy is that if there is a segment of land that has an MD (major debris flow area) attached to it, expansion of the roadway cannot be permitted unless it is proven that that a hazard does not exist. For example, if information comes to the City that indicates and proves that it is infeasible to have a roadway through a PDF zone, that could be the basis for stopping the road at that point. CDD Ewing cited the Municipal Code on page 360, Section 10 and Subsection H, noting that since the old policy expired these are now the policies addressing roadway segments, plus the additional items on the geologic conditions.

Asked if owners along the entire paper road must be considered, or does an applicant only need to consider the evidence of support from owners of the property abutting the portion that is being considered for incremental expansion. PP de Melo stated that support must be obtained from people along the road to be improved as well as support from people who would be excluded from the segment. By way of explaining why this was included in the San Juan Plan 20 years ago, C Feierbach noted that Council was getting a lot of haphazard building in the canyon with and without roads, so they made a decision that an applicant would have to build a whole road in order to create a development with some integrity. CDD Ewing added that an

applicant's proposal could not be held up by a third party refusing to sign on. Staff further clarified that if it cannot be shown that an MD is a false labeling, it is an absolute stop, but that a PDF should be looked at by the City to determine that a stable, safe through road cannot reasonably be constructed because of physical constraints. In the case of a very large PDF that would cost a tremendous amount of money or would result in a tremendous amount of grading, Council could conclude that it is unreasonable to construct the road through. and a segment could be supported. PP de Melo clarified the geologic criteria for the difference between PDF and MD zones as spelled out on page 354 of the Municipal Code.

Gary Jones, 2707 Sequoia Way, asked for confirmation that if property is currently declared PDF one could build a road but could not build houses. PP de Melo responded that, according to the geologic criteria for development, Residential Uses, it indicates that residential uses are not permitted without verification that the map needs to be changed to show that a hazard does not exist. CDD Ewing stated that a driveway probably falls into the road category and that one could probably build a driveway across a PDF area to access a non-PDF area for a dwelling. He added that a geologic study would more clearly identify where the PDF zone is on the lot and development outside the PDF zone could be considered. Mr. Jones felt that the financial resources required to build a project sounded rather ambiguous and that somebody could lose the money and not be able to finish the project. CDD Ewing stated that the requirement for a method of financing and a plan for maintenance gets one in the door for project review, but that performance bonds would have to be posted with the City before the Public Works Department would issue a construction permit. Mr. Jones questioned how the City would determine the engineering feasibility of building a road through a PDF area as compared to determining that it is not economically feasible to build. CDD Ewing responded that the Planning Commission would have to make the findings, as would the Council, that the project complies with the standards and policies of the San Juan Hills Area Roadway Plan, that it minimizes grading, and take all of those things into account. Mr. Jones asked if building a Nottingham-type of setup would be more likely to gain acceptance than excessive grading and excessive expense to build the road all the way through. CDD Ewing said "subject to approval by the Council."

Mitchell Baker, 2704 All View Way, stated that, at the lot merger hearings, that she was struck by the number of lots that have up to 70 degree slopes, which she understands are almost impossible to build on. She asked if the City would build a road if the lots to which the road gave access were almost impossible to build on; i.e., is the road discussion separate from the rest of the development? CDD Ewing responded that a road could be built where properties fronting it had very steep slopes, but one of the requirements for an application of the Road Improvement Plan is that the applicant has to show that access can be provided to each of the lots fronting the proposed road, so that if the lot was so steep that you couldn't build a driveway, that would present a problem with the initial application. He added that there is no standard for what constitutes how "access can be provided."

Chair Parsons called for a recess at 8:05 p.m. Meeting resumed at 8:15 p.m.

## **7. PUBLIC HEARINGS:**

**Public Hearing – 2936 Alhambra Drive: To consider a Design Review Permit and Tree Removal Permit, to allow construction of a 3,095 square-foot single-family residence on a 9,904 square-foot site. Approximately 52 cubic yards of soil would be exported from the site. (Appl. No. 01-0055); APN: 043-232-100, 043-232-220; Zoned: R-1/B; CEQA Status: Categorically Exempt; Applicants/Owners: Larry Siebert and Shirley Nichols**

C Feierbach recused herself as she lives within 500 feet of the subject property.

AP Ouse summarized the staff report, recommending approval subject to conditions and findings noted.

Applicant Larry Siebert, 300 Rolling Hills Avenue, San Mateo, thanked AP Ouse and Duncan Jones, City Engineer for their work on the project. He noted for the record that by traversing the property with the driveway, the cut and fill was reduced by under 500 cubic yards and kept the overall retaining wall heights lower. He added that they took the plans to the neighbors within the 300' radius and everyone that they were able to talk to was very supportive of the project.

C Torre asked if the soil nails would be within the City right-of-way. Joel Baldwin, Earth Investigations Consultants, responded that the soil nail structure would be above the driveway on the property, not extending on to the City right-of-way, and that they are for the retaining wall, not the house. C Wiecha asked if there are soil nails contemplated in the first portion of the retaining wall within the curve of the driveway coming off Alhambra, since the first section of the retaining wall is in fact within the City right-of-way, and if they would encroach on adjacent property. Mr. Baldwin stated that he has not seen a plan showing the distribution of soil nails relative to property lines but it is his understanding that the soil nails are not going to project onto adjoining properties. Mr. Baldwin stated that he would recommend against the soil nails extending into adjoining property,

Responding to C Gibson's question, Mr. Baldwin stated that the plan to use Keystone retaining walls has been revised in order to meet the desire of the City.

Responding to C Torre's question regarding the public benefit to be gained through a better drainage plan, Mr. Siebert stated that five properties would be improved. His drainage pipes will take the water to the terminus of the street, where the water now goes into dirt and down the canyon, thereby alleviating flooding and drainage problems for the City.

C Torre felt that the skylight was an unusual choice given the rest of the house and asked for the design reasons behind that choice. Mr. Siebert responded that he and his wife thought it would be a nice touch to be able to see the night skies.

From an aesthetic point of view, C Wiecha questioned the use of two different types of materials for the retaining walls on the two sides of the driveway. Mr. Siebert stated that they attempted to blend it into the adjacent property. The upper wall is made to look like pure rock so that it has a natural look to it, similar to that used on Highway 92 but with a sculpted look, and the lower one matches the adjacent neighbor's block.

Juaquine Roberts, Civil and Structural Engineer, stated that they received recommendations from their geotechnical engineer that it did not make sense to remove the sound rock and replace it with a softer fill, which would be required with the standard Keystone wall. There is a requirement for a filter fabric behind the wall that extended 6 to 7 feet behind the wall.

Chair Parsons opened the public hearing. No one came forward to speak.

**MOTION: By Commissioner Wiecha, seconded by Commissioner Mathewson, to close the public hearing. Motion passed.**

C Gibson cited several bad examples of this type of driveway in the City. He likes the Shotcrete. He felt that the cedar siding looks great for a year and then ends up being painted, even if it is stained.

C Mathewson felt that the project has become a much better one over time but still has concerns about building on a 38 degree slope. He liked the drainage tie-in and hoped that the engineering works so that the nails do not go into the neighbor's property or the City's right-of-way. He feels that it is well engineered.

C Wiecha thanked staff for the extensive nature of the information. Her main concern is with the zoning ordinance and the 6' limit on retaining wall height and how that will impact the handling of this project. She also has an issue with the aesthetics of two different types of retaining wall materials being utilized. She added that if the two walls next to each other can be seen from the public right-of-way, her minimum requirement would be landscaping to cover it. Technically, she felt that the geotechnical issues had been addressed, and the final Cotton Shires report implies that they are satisfied with the issue of the landslide being handled, and there will be further reviews during the detailed design. She is assuming that there will be no soil nail encroachment onto adjacent properties. C Mathewson confirmed that C Wiecha's potential conflict is with Design Review Criteria C and appropriate retaining wall height in conformance with the zoning ordinance.

C Torre agreed that it was a full report and that future applicants should be encouraged to provide some explanation of what has happened in the course of developing a project; Cotton Shires is satisfied with the appropriateness and she is inclined favorably towards the project. Responding to C Torre's question, AP Ouse read the findings that will need to be met in order to grant a variance.

C Petersen stated that she and C Gibson had walked around the area and after reviewing the plans and reading Cotton Shires report it appears that it would be stable. She applauded the applicant for working the drainage in a way that would be beneficial to adjacent property owners and believes that it would fit in with the other houses in the neighborhood.

Chair Parsons added that he likes the natural stonework on the one wall but feels that there's a way to make the other wall more attractive by use of the same material. He is not in favor of making higher walls or more walls that would require more grading.

CDD Ewing suggested that the item be continued, since a variance for the 10' retaining wall is required, or if it is conditioned to require a 6' retaining wall, it would need to come back due to the grading issue. Commissioner Wiecha agreed, adding that the amount of grading that would be required to keep the wall down to 6' would need to be considered.

To summarize, Chair Parsons noted that the consensus is that the Commissioners all have problems with the two different kinds of walls. C Wiecha added that, given the vast difference in the design of the retaining walls, the Commission is looking for a similarity in aesthetics between the two retaining walls.

**MOTION: By Commissioner Torre, seconded by Commissioner Mathewson, to continue the Single-Family Design Review and Tree Removal Permit to a date uncertain.**

**Ayes: Torre, Mathewson, Wiecha, Gibson, Petersen, Parsons**

**Noes: None**

**Recused: Feierbach**

**Motion to continue passed 6/0/1**

Chair Parsons called for a brief recess at 9:00 p.m.

**Public Hearing - 1814 Oak Knoll Drive: To consider a variance application to allow a proposed deck expansion to encroach into the required 15-ft. rear yard setback. The applicant proposes to expand the size of an existing deck to encroach into the required rear yard by approximately four feet, reducing the rear yard setback to eleven feet. (Appl. No. 01-0356); APN: 044-064-080; Zoned: R-1B (Single-Family Residential); CEQA Status: Exempt; Steven R. Eckert, Owner/Applicant**

C Mathewson recused himself from discussion of this item as he lives within 500 feet of the subject property.

PP de Melo summarized the staff report, recommending approval with conditions.

Questions from the Commission and responses from staff and the applicant are summarized below:

C Wiecha: How far would the support beams and other support system for the deck be from the property line? Applicant Steve Eckert (1814 Oak Knoll): Existing 15' setback from edge of the existing deck would be reduced to 11' and five support beams go out 4' more before they turn down to connect to the retaining wall, and the retaining wall is 7' from the property line. He added that the deck for 1915 Hillman crosses the property line, the fence is on his side of their deck and there is a prescriptive easement giving the owners of 1915 Hillman exclusive use of a 3' section of his property. Wiecha commented that, as she understands prescriptive easements, Mr. Eckert has actually lost his rights to that property; therefore, the deck extension

would actually be 3' from the property line. Mr. Eckert added that the main use of the strip is for screening, provided by a row of trees on the other side of the fence, which he had previously been required to plant by the City of Belmont.

C Feierbach: Referring to a report dated September 12, 2001 discussing a FAR exception, if this deck were to be built, would approximately 80% of it be covered, even though the decks are not part of the floor area? PP de Melo: Decks are no longer counted in FAR calculations but in terms of structure this would be correct. C Torre added that if you were talking about structure, the actual footprint on the property would be less than 80% since floor area counts both stories. C Feierbach: How many square feet are not presently covered by deck? PP de Melo calculated that there is 750 square feet of open space, inclusive of the patio, uncovered by decks in the rear.

C Torre: Is there a reason for the deck to be off-center? PP de Melo: Believes the applicant's reason for doing this was to connect it to existing piers, and in order to connect it to the center they would lose the use of the patio. C. Torre: The drawing shows where the piers are – the applicant has chosen to go in 7' on one side and 3' on the other but the piers are about every 4', so he could still have hooked into piers and have a more centered deck. Mr. Eckert: The primary reason for the misalignment is to shift this space away from the deck at 1816 Oak Knoll to provide more privacy between the two decks. He added that the size of the extension is intended to be slightly less than the variance obtained at 1816 last year and that's how they picked the location and the sizing.

Chair Parsons: Since the posts that go out are attached to the deck, wouldn't they be considered part of the structure? CDD Ewing: He had the same question – are the existing retaining wall piers and the support beams going to be upgraded on which to support the deck, or are these new piers and new support beams? Mr. Eckert: All of the piers showing in the drawing exist currently; the cross support beams are not there. C Wiecha: Calculated that the deck supports are 7' from the property line and therefore the encroachment is 8' into the rear yard – not 4' as stated in the notice. CDD Ewing concurred, if the piers are new construction. If the design is used as proposed it would have to be re-noticed. and the Commission could only, at most, approve a variance down to 11' which would be the edge of the deck but not the way the applicant has proposed to support it. The item could be continued so that it could be re-noticed properly.

C Feierbach: Asked the City Attorney to describe a Variance with respect to precedent and questioned how one could rationalize the granting of a Variance to build a deck – i.e., a deck is not required. CA Savaree: Explained the requirements in detail, noting that every finding must be made in the affirmative, and that the Commission needs to concentrate on the particular lot and the physical constraints that apply to that lot. She added that there is no precedent set by the granting of a Variance, and that what the Commissioners need to concentrate on every time a Variance comes before them is what is special about the lot and what is it about the piece of land that allows them to make every one of the findings in the affirmative. C Feierbach: What is special about the land in question compared to other land around it? CDD Ewing: Referred to the analysis on page 3 of the staff report where the lot is described as substandard in size and depth. He added that the first finding is where the word "hardship" appears and stated that the test for hardship is asking if imposing a 15' rear yard setback on this property results in "practical difficulty or unnecessary physical hardship inconsistent with the objectives of the zoning plan." He went on to state that the zoning plan objectives are contained in the Zoning Ordinance and talks about use of a lot for single-family use and what a residential zone is all about, and that sufficient outdoor recreation space is an element of the objective of the zoning plan. Staff's rationale for this finding is that a practical, difficult or unnecessary physical hardship results when considering outdoor recreational space when one poses the 15' rear yard. C Feierbach felt that the patio is recreational space. CDD Ewing: Staff's analysis also talks about the steepness of the area with limited access to the rear patio on the ground, and that access to the rear yard, where the only other outdoor recreational space for the lot is located, would only be through a non-conforming side yard or via stairs exposed to wet weather, darkness and other things. He added that it might create a safety problem for access, so we're looking at qualities of using the lot for residential purposes to help come to some understanding of whether there are practical difficulties or unnecessary physical hardships. C Feierbach: Did not understand how, in this case, the applicant has had this piece of property for "x" number of years and all of a sudden it has become a hardship.

C Gibson stated that the basic problem is that the house was built on a substandard lot and the Commission is being asked to provide remedies for difficulties that are based on that decision that was approved by

somebody 24 years ago. CDD Ewing responded that the real problem started when the City approved the lot dimension size of the original residence in the first place.

Mr. Eckert addressed the Commission, pointing out that they have in the last two years twice approved a Variance for the same size lot and the same size structure and more square footage of encroachment, and that the City Council passed a resolution that granting one Variance does establish a precedence. He stated that reusing the existing piers seemed to him to be a good idea, but if the Commission does not approve of that idea he would be willing to put in piers with conditions that the support posts do not extend beyond the decking. He reiterated that, because the lot size is the same as 1816 Oak Knoll, the building envelope is the same, the findings are the same, and one of the findings is that it is not a grant of special privilege, and that 1816 Oak Knoll received a Variance last year and that Variance was not a grant of special privilege. In terms of concern about the new vertical supports, he demonstrated on the drawings that the posts will not be visible from the downslope property because of existing mature landscaping. He added that approximately 60 property owners in the area signed a letter of support for the variance at 1816 Oak Knoll with no dissents, but that he did not re-collect those same signatures. He stated that there was considerable testimony from the neighbors that making these decks bigger improves the privacy of the downslope neighbor by interrupting the view between the upslope living room windows and the downslope living room windows.

Chair Parsons opened the public hearing.

Enrico and Evangeline Sanchez, 1915 Hillman Avenue, addressed the Commission to voice opposition to the petition. Mr. Sanchez read their statement into the record, which detailed the negative impact the proposed deck extension would have on their privacy. He cited an example of Mr. Eckert's ability to hear conversations taking place in the Sanchez's backyard, and their concern that anyone using Mr. Eckert's deck would be able to look down into their backyard, resulting in the loss of their privacy, and the loss of sunlight to their property. Mr. Sanchez also stated that the proposed deck would be so close to their bathroom windows that they would not be able to open them since anyone on the new deck would be able to see into the windows, especially in the winter when leaves are scarce. Mrs. Sanchez added that, to her knowledge, the deck extension on the neighboring house (1816 Oak Knoll) was existing when the present owner bought the house. ( A copy of the Sanchez statement is included in the Community Development file on this application.)

**MOTION: By Commissioner Wiecha, seconded by Commissioner Feierbach, to close the Public Hearing. Motion passed.**

Discussion by the Commission was as follows:

C Torre described the background for the granting of the variance at 1816 Oak Knoll. She stated that the two situations are not identical; the two lot sizes, depth of yard and house plans are virtually identical, but one of the differences that factored into the Commission's consideration of the Variance for the deck on 1816 had to do with usability for recreational purposes. 1816 had an undeveloped basement that could not be developed under current codes and therefore there was no easy access to the back yard. 1814, unlike 1816, enjoys having been granted a FAR exception to develop its downstairs level and therefore has access to the outside yard.

C Feierbach asked for confirmation that the City Council overturned the Planning Commission's decision on the Variance application for 1816 Oak Knoll. PP de Melo replied that there were two applications. The first application was for a Variance to allow the full extension of a previously unpermitted deck extension that was 12' from the existing structure to the edge of the deck. The Planning Commission recommended approval of that extension, and the item was appealed to the City Council. The Council overturned the Planning Commission's decision, and then the applicant came back with a reduced deck extension, which was subsequently approved.

C Petersen stated that, in light of information brought to her attention by the neighbors who spoke, she has trouble with Finding (e) -- "materially injurious to properties" -- in terms of sunlight, overhearing conversations and privacy.



C Wiecha stated that if it weren't for the negative impacts on the downslope neighbors at 1915 Hillman, she could support staff's recommendation, with the correction to make the backyard setback consistent with the noticed item of 4' additional encroachment, or reduce the backyard setback to 11' as opposed to the current design proposed by the applicant. However, she echoed C Peterson's concern with respect to making Finding (e) in light of the loss of privacy, loss of sunlight, and other encroachments on the adjacent property. She added that this was not the case in the 1816 Oak Knoll property that deck was much larger and a portion of it was removed as part of the granting of the Variance.

C Gibson had trouble with Findings (c) and (e) because, as he saw it, the difficulties flowed from the fact that a house was chosen to be built on a substandard lot rather than the strict or literal interpretation or enforcement of regulations. He therefore felt that it would constitute a grant of special privilege and had voted "no" on the Sirenko's variance application and would vote consistent with that vote on the current application.

C Feierbach stated that she could not make Finding (a) – "The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty." She saw nothing wrong with a small deck and did not feel that they need to encroach into back yard setbacks. She believes that the reason back yard setbacks were established was to allow space between one house and the houses around it, and if we encroach in that rear setback we are violating a principal of personal freedom of residents to be able to enjoy having a party and not affect other people.

C Torre: Stated that she came to the meeting inclined to vote "yes" in light of the fact that she had voted "yes" on the 1816 application. She was persuaded by the appropriateness of the arguments related to the uniqueness of the two lots and to the difficulty of access to the rear yard, although it would have had to be with the posts being at a 4' rather than 8' setback. She was, however, concerned about the issues raised by the neighbors but did not believe it would create sunlight problems in their family room. It was her understanding that privacy is not called out specifically in the City's codes and she would advise that this should be addressed more specifically in terms of the General Plan amendment. She does think that those are serious issues and is concerned that, in the previous case, the applicant had the support of the downslope neighbors who felt that the deck actually improved their visual privacy and the angle of the deck and windows was something that they felt was an improvement. In this case, the neighbors are raising concerns about auditory privacy, which did not come into play before.

Chair Parsons agreed with most of the other Commissioners but had several findings that he had trouble making in that there is a difference in the property and how it is developed. The fact that there is livable space readily accessible on this house, the fact that there was a deck already existing on the other house, and the fact that the neighbors were in support of it, are all items that make these projects different. Because of those differences, he felt it hard to make the findings for this application.

CA Savaree advised the Commission that they need to articulate what finding or findings they are not able to make and why, and that every single finding must be made in the affirmative to grant the Variance.

**MOTION: By Commissioner Feierbach, seconded by Commissioner Petersen, to deny the application for a Variance at 1814 Oak Knoll Drive for the following reasons: 1) Based on the testimony offered by the neighbors about loss of sunlight and privacy, Finding (e) cannot be made in the affirmative because the project would be detrimental to the public health, safety and welfare or materially injurious to properties or improvements in the vicinity; and 2), Finding (a) cannot be made in the affirmative due to the fact that there is no physical hardship since there is a deck and space to walk around the area that is not a deck, and there is easy physical access to the patio.**

**Ayes: Feierbach, Petersen, Wiecha, Gibson, Torre, Parsons**

**Noes: None**

**Recused: Mathewson**

**Motion to deny passed 6/0/1**

CA Savaree stated that a resolution would be brought back to the Commission on the next agenda that will state in written form the inability to make Findings (a) and (e) in the affirmative.

CDD Ewing stated that this item may be appealed to the City Council within ten days after the resolution is adopted, and since the applicant had already left the room, he will be so advised.

**9. NEW BUSINESS: None**

**10. REPORTS, STUDIES, UPDATES, AND COMMENTS**

**Update on Hillside Development Policy Project**

**AP Ouse presented a brief update on the project, noting that the staff took the Commission's suggestions to the Council on January 8, 2002, and had included the work plan as recommended by Council in the Commission's packet. One of the first steps will be to host a public workshop the following evening, to be followed by a series of public workshops to discuss items that are brought up at that event.**

Responding to Commissioner Parsons' question about the status of a code enforcement issue on 1816 Oak Knoll Drive, CDD Ewing stated that there is a permit issued and they are operating under it.

**11. ADJOURNMENT:**

The meeting adjourned at 10:11 p.m. to a regular meeting on February 19, 2002 at 7:00 p.m. at Twin Pines Senior and Community Center.

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Craig A. Ewing, AICP

Planning Commission Secretary

*Audiotapes of Planning Commission Meetings are available for review*

*in the Community Development Department.*

*Please call (650) 595-7416 to schedule an appointment*